

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERON D. BROWN,	§
	§
Defendant Below-	§ No. 578, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0401017178
Plaintiff Below-	§
Appellee.	§

Submitted: April 29, 2009

Decided: July 6, 2009

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 6th day of July 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Jeron Brown, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Brown's opening brief that his appeal is without merit. We agree. Accordingly, we affirm the Superior Court's judgment.

(2) The record at trial reflects that Brown was charged with three counts of burglary and multiple other crimes, including theft, receiving stolen property, and criminal mischief. At trial, Brown's codefendant, Shirley Weeks,

testified that she helped Brown break into a residence and steal items therein. The State also introduced a videotape from a convenience store located near that burglary. The tape showed a person matching Brown's description attempting to sell some of the stolen goods immediately after the burglary. The victim of the burglary identified the items on the videotape as belonging to him. The State also introduced evidence seized from Brown's residence during the execution of a search warrant. The items seized were property stolen during other reported burglaries in the Dover area. The State also introduced a copy of a letter that Brown wrote to Weeks in which he berated her for not wearing gloves during the burglary.¹

(3) The Superior Court jury convicted Brown in March 2005 of second degree burglary, theft, criminal mischief, and two counts of receiving stolen property. The jury found him not guilty of the other two burglary charges and two criminal mischief charges. This Court affirmed on direct appeal.² Thereafter, Brown filed a motion for postconviction relief and a subsequent amendment to the motion. The Superior Court assigned the matter to a Commissioner for proposed findings and recommendations. After obtaining responses from defense counsel and counsel for the State, the Commissioner

¹ Weeks' fingerprint was found at the scene of the burglary for which Brown ultimately was convicted.

² *Brown v. State*, 897 A.2d 748 (Del. 2006).

recommended denial of Brown's motion. The Superior Court adopted the Commissioner's findings and recommendations and thus denied Brown's motion. This appeal followed.

(4) In his opening brief on appeal, Brown asserts that his trial counsel was ineffective in the following respects:³ (i) for failing to prepare adequately for trial and for starting to make an opening statement and then waiving Brown's right to do so; (ii) for failing to challenge Brady material; (iii) for failing to challenge the State's use of the out of court statements of a non-testifying witness; (iv) for failing to call defense witnesses; (v) for failing to prepare exhibits; (vi) for failing to redact exhibits; (vii) for failing to use impeaching evidence to properly cross-examine witnesses; and (viii) for failing to recuse himself due to a conflict of interest.⁴

(5) This Court reviews the Superior Court's denial of postconviction relief for abuse of discretion.⁵ To prevail on a claim of ineffective assistance of counsel, a defendant must establish that (i) his trial counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's

³ It is difficult to discern all of Brown's arguments. The summary of argument section of his brief consists of one paragraph, while the argument section of his brief, which consists of forty unnumbered pages, purports to enumerate eight arguments.

⁴ To the extent Brown raised other claims in his postconviction motion, those issues are deemed waived for Brown's failure to brief them on appeal. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

⁵ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

unprofessional errors, the outcome of the proceedings would have been different.⁶ There is a “strong presumption” that counsel’s representation was professionally reasonable.⁷ Moreover, the defendant must set forth and substantiate concrete allegations of actual prejudice.⁸

(6) Having carefully considered the parties’ respective positions on appeal, as well as the record below, we find it manifest that the Superior Court’s judgment, which adopted the findings and recommendation of the Commissioner, should be affirmed. As the Commissioner detailed, and the Judge held, Brown failed to prove any error by his trial counsel. Moreover, even if error could have been established, the evidence against Brown at trial was so overwhelming that there could have been no prejudice from any alleged error.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

⁷ *Strickland v. Washington*, 466 U.S. at 689.

⁸ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).